

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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CASE NO. 01-RC-181492

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IN THE MATTER OF  
GREEN LINE GROUP, INC.  
AND  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,  
LOCAL 1228, AFL-CIO

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UNION, IBEW LOCAL 1228  
OPPOSITION TO REQUEST FOR REVIEW BY EMPLOYER,  
GREEN LINE GROUP, INC.

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## **I. STATEMENT OF THE CASE**

Petitioner, International Brotherhood of Electrical Workers Local 1228 (the Union) seeks to represent a bargaining unit of broadcast technicians employed by Green Line Group (GLG) in New England, including the classifications of technical manager, technical director, audio 1, submix RF A2, audio 2, audio 3, video 1, video 2, graphics operator, teleprompter operator, font assistant, ENG camera operator, robo camera operator, handheld camera operator, hard camera operator, lead EVS, EVS 2, EVS RO, score box operator, truck AD, tape AD, phone AD, stage manager, lead utility, parab, cart driver, statistician, TOC, and production assistant/runner.

Since GLG claimed the workers are independent contractors and not statutory employees, Region 1 held a hearing on August 15 and 16, 2016. The Region issued its Decision and Direction of Election dated September 16, 2016 finding that the petitioned for broadcast technicians are statutory employees and directed an election. The election is currently under way.

In reaching its Decision the Region determined that GLG had not carried its burden of proving that the GLG crew members are independent contractors and not statutory employees. On September 30, 2016 GLG filed its Request for Review.

In accordance with the standards established by NLRB precedent, fundamental principles of the common-law agency test and the multi factor analysis used to determine whether a worker is an independent contractor rather than an employee, Region 1 has correctly concluded that the petitioned for unit of broadcast technicians employed by GLG are statutory employees and has therefore Directed the Election in this case.

In accordance with 29 CFR 102.67(f) this is an opposition by IBEW Local 1228 the Petitioner in this case, to the Request for Review by the Employer, Green Line Group, Inc., in this matter.

**II. REGION 1 CORRECTLY DETERMINED THAT THE PETITIONED FOR WORKERS ARE EMPLOYEES**

In this case, Region 1 properly determined that the petitioned for workers are statutory employees and not independent contractors. The Region's determination in this case recognizes the changing nature of employment and that workers labeled "freelancers" can still be statutory employees. See *Crew One Productions, Inc.*, 362 NLRB No. 8 (January 30, 2015); *Lancaster Symphony Orchestra*, 357 NLRB No. 152 (December 27, 2011); *BKN, Inc.*, 333 NLRB No. 14 (January 31, 2001). As stated in *BKN, Inc.*, this reinforces "the Board's public policy interest in not disenfranchising workers simply because of the peculiarities of their trade." *BKN, Inc.*, 333 NLRB No. 14.

To determine whether workers are employees or independent contractors, the Board and this Region have considered the following factors, discussed in the Restatement (Second) of Agency (1958):

- 1.) The extent of control which, by agreement, the master may exercise over the details of the work.
- 2.) Whether the individual is engaged in a distinct occupation or work.
- 3.) The kind of occupation, with reference to whether, in the locality in question, the work is usually done under the direction of the employer or by a specialist without supervision;
- 4.) The skill required in the particular occupation.

- 5.) Whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work.
- 6.) The length of time for which the person is employed.
- 7.) The method of payment, whether by the time or by the job.
- 8.) Whether or not the work in question is part of the regular business of the employer.
- 9.) Whether or not the parties believe they are creating the relation of master and servant.
- 10.) Whether the principal is or is not in the business.

*FedEx Home Delivery*, 361 NLRB No. 55, slip op. at 2 (2014).

No single factor is controlling. *FedEx Home Delivery*, 361 NLRB No. 55 (September 30, 2014); *Roadway Package System*, 326 NLRB 842 (1998). The burden is on the party asserting independent contractor status, which is the employer in this case, to show that the classifications in question are independent contractors. *FedEx Home Delivery*, 361 NLRB No. 55; *BKN Inc.*, 333 NLRB at 144.

In this case the Region evaluated each of these factors and determined that “weighing all of the above factors, I conclude that GLG has not carried its burden of proving the independent contractor status of its crew members.” Decision at 13 The Region also explained that “all factors must be assessed and weighed,” and that “no one factor is decisive.” “Relevant factors may be considered and the weight to be given a particular factor depends on the factual circumstance of each case.” Decision at 13 Furthermore, the Board has rejected the notion that the predominant factor in its independent contractor analysis is whether an employer has a “right to control” the manner and means of the work performed by an individual”. *FedEx Delivery*, 361

NLRB No. 55, slip op at 2 (2014). “Viewed in its entirety, the record establishes that GLG’s crew members are statutory employees.” Decision 13.

Similar to the freelance writers in BKN, Inc. 333 NLRB No. 14 at 1 (2001), the Region recognized that it is common in the industry for the technician’s to work under “freelance” working arrangements. In addition, the various NLRB cases concerning questions of independent contractor vs. employee all involve weighing the relevant factors and even if there is some evidence supportive of independent contractor status that “more compelling factors” and the record in its entirety can compel the conclusion that such workers are employees.

**1. The extent of control which, by agreement, the master may exercise over the details of work**

Although the Region concluded that this factor favors independent contractor status, it is clear that this is only one of the factors to consider and that no single factor is controlling. FedEx Home Delivery, 361 NLRB No. 55 (September 30, 2014). The Region acknowledged “the Board has rejected the notion that the predominant factor in its independent-contractor analysis is whether an employer has a “right to control” the manner and means of the work performed by an individual. Rather, “all factors must be assessed and weighed, no one factor is decisive, other relevant factors may be considered and the weight to be given a particular factor depends on the factual circumstances of each case. FedEx Delivery, Supra slip op. at 2.” Decision at 13.

In its Request for Review GLG focused on its claim that the “Right of Control” factor should be given “special attention,” however the Region made clear that in the Board’s analysis right of control is not a factor more important than the other many factors.

Furthermore, the Board has found that when the employer controls the hours, location, and essential details of the workers' jobs, they are more likely to be employees than independent contractors. See *Sisters Camelot* 363 NLRB No. 13; *Porter Drywall*, 362 NLRB No. 6; *FedEx Home Delivery*, 361 NLRB No. 55. The facts show that GLG does in fact have a significant amount of control over its workers.

Green Line workers do not have a say in start times or hours of work. *Id.* Instead, they are told when the "call times" are by Penny Starks. P-7; P-13; P-14. <sup>1</sup>These times are always firm, and the workers are expected to report to work at these times. T-2 at 265, 276.

GLG assigns the location where the individual works. Paul Goldman testified that "we schedule the crew and tell them what time to be there and where they're going." T-1 at 72. Penny Starks creates and maintains the schedules based on the workers' availability. T-1 at 136. When there is a conflict, Penny decides where to "move" the workers and what show they will be working. *Id.* She then notifies the worker of the assignment. P-7; P-13; P-14.

Due to the nature of the work being done, especially by the more skilled cameramen, not much direct supervision is required at the work location. See *CSS Healthcare Services, Inc.*, 355 NLRB 472 (2010), adopting *CSS Healthcare Services, Inc.*, 2009 WL 3142226 (September 29, 2009). As in *CSS Healthcare Services*, this is "more the product of the professional nature of the work than anything else," rather than a clear sign of independent contractor status. *Id.* As stated in *Sisters Camelot*, "the

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<sup>1</sup> Volumes 1 and 2 of the Transcript for the hearing held on August 15 and 16, 2016 will be referred to as T-1 and T-2, respectively, followed by the page number. Exhibits are referenced as E for Employer exhibits and P for Petitioner exhibits.

nature of the work makes such in-person supervision highly impractical.” *Sisters Camelot*, 363 NLRB No. 13; See *Mitchell Bros. Truck Lines*, 249 NLRB 476, 481 (1980).

The Board has looked to evidence of record-keeping as a sign of employer supervision and control. See *Sisters Camelot*, 363 NLRB No. 13; *FedEx Home Delivery*, 361 NLRB No. 55. GLG requires workers to report their “out times,” overtime, and missed meals to the technical director or someone from Green Line. P-12. This is most often through the Technical Director, another GLG worker. These times, along with other information, is entered into a report for each show. T-1 at 54, 87; T-2 at 254. Additionally, GLG prepares spreadsheets for events that list each of the workers, their positions, and the times they are to report to the event. P-12.

In addition, in 2014, Penny Starks notified a group of workers that she intended to “begin to hold regular meetings” with the workers. P-8. As she explained “I want you to think of them as akin to meeting Penny by the water cooler, so to speak.” *Id.* Holding regular meetings with workers is surely a sign of employer control and employee status

## **2. Whether the crew members are engaged in a distinct occupation or work**

In this factor, the Region found that the workers “are clearly identified at the venues to which they report as GLG workers.” Decision at 9. In particular, the Region pointed to the fact that the clients negotiate with GLG over the rates paid to GLG’s crew members as a group and that the client’s deal with GLG over all working arrangements and advocated for the GLG workers as a group. In particular, the Region looked to the fact that GLG advocated for the GLG workers as a group with the Red Sox over unsatisfactory working conditions. Decision at 9.

**3. Whether the work is usually done under the direction of the employer or by a specialist without supervision**

This factor is really a combination of the question of workers skill and who controls the work being done. The Region concluded that “to the degree that GLG workers require supervision at a venue “that it is mostly provided by the client.” So, although the worker may be supervised, it was not always direct supervision by GLG at the work site. This fact combined with GLG not having an employee handbook or work rules or a discipline policy, caused the Region to conclude that this factor favors independent contractor status. However, the Region ignored the facts that the workers still are provided direction by GLG’s clients, so the worker is not working independently and is supervised. Also, the Board in other cases has looked to evidence of record-keeping as a sign of employer supervision and control. See *Sisters Camelot*, 363 NLRB No. 13; *FedEx Home Delivery*, 361 NLRB No. 55. GLG required workers to report their “our times,” overtime, and missed meals to the technical director or someone from Green Line. P-12. This is most often through the Technical Director, another Green Line worker. These times, along with other information, is entered into a report for each show. T-1 at 54, 87; T-2 at 254. Additionally, Green Line prepares spreadsheets for events that list each of the workers, their positions, and the times they are to report to the event. P-2.

In *FedEx*, although the drivers were not supervised continuously, the Board found that “FedEx essentially directs their performance via the enforcement of rules...” *FedEx Home Delivery*, 361 NLRB No. 55. The same reasoning applies to this case. On May 1, 2014, John Upton was to report to the Pawtucket Red Sox game because Green Line told him to. He was to report at 1:00 p.m. because Green Line told him to. He also



was to report any overtime and any missed meals to Green Line because that is what Green Line requires. P-12.

**4. Whether or not the parties believe they are creating an independent-contractor relationship**

The Region concluded that the parties did not believe they are creating an independent-contractor relationship. Although some workers signed a document labeled independent contractor agreement, this was many years ago and such documents have not been used since 2005. Therefore, this does not demonstrate that the parties believe they are creating an independent contractor relationship. Decision at 11, 12. Even if some of the workers signed Independent Contractor Agreement documents provided by the Company this does not mean the workers agree that they are in fact independent contractors. See Lancaster Symphony Orchestra, *supra*.

**5. Whether the employer or individual supplies the instrumentalities, tools and place of work**

As the Region properly found, “the vast majority of GLG’s crew members do not provide their own equipment. Rather, GLG’s clients supply the necessary equipment, such as cameras, EVS machines, graphic generations, microphones and cables at the place of work.” Decision at 10.

The evidence in the record shows that virtually all tools and equipment are provided for the workers. As Paul Goldman testified, Green Line provides the TV mobile units or audio trucks for certain events, like the Boston Marathon and the Newport Tennis Tournament. T-1 at 17. On other events, the tools and equipment, such as the cameras for the camera operators, are arranged for by Green Line with Green

Line's clients and the workers report to the truck to pick up the equipment that he/she will be using at the worksite. T-1 at 154.

Even the few, isolated examples that the Company provided where a worker brought some equipment or tools for ENG work, Green Line ultimately paid for the tools, either directly to the workers or to the Company where the equipment rental was made. E-2; E-3. When the employer provides the equipment and tools, whether directly, through the client or by renting the items, this is indicative of employee status. See *Sisters Camelot*, 363 NLRB No. 13; *Porter Drywall*, 362 NLRB No. 6.

Although Green Line claimed that workers provided their own tools, the evidence did not support that claim. In fact, the evidence shows workers who use equipment and tools such as cameras and microphones are provided those tools on-site. T-1 at 96. Only a few specialized workers might bring some tools to the worksite, but they are then reimbursed by Green Line or paid by Green Line for the use of the tools. E-2; E-3.

The evidence shows that Green Line chooses the place of work for each assignment, which indicates employee status. See *Sisters Camelot*, 316 NLRB No. 13. In emails to workers, Penny Starks routinely told employees what their work assignment was for a particular day. P-6; P-7; P-13; P-14.

For workers assigned to full season packages, the place of work is obvious and has been established over the years. T-1 at 137. However, for single events, the evidence shows that Penny Starks gives the workers specific instructions about where to report and who to report to. P-13, "Parking tomorrow"; P-14 "8/7". In her October 29, 2015 email to more than 25 workers, she wrote "when you get to Harvard tomorrow look for our runner," and provided the runner's name, phone number, location, and what she would be wearing. P-13, "Parking tomorrow". "She will have your parking location as

well as your parking pass and credential.” *Id.* Again, this shows Green Line’s control over the place of work.

#### **6. Length of Time for which the Individuals are Employed**

In this case, the Region determined that many GLG crew members have worked for GLG for many years and work as many as 200 events per year. Other crew members work for GLG less frequently but consistently. “This expectation of continuous working relationship weighs heavily in favor of employee status.” Decision at 10.

Most GLG workers have a permanent, long-term working relationship with the Employer. Board precedent considers the nature of the relationship to be more relevant than the duration of a particular contract. See *Sisters Camelot*, 363 NLRB No. 13 (September 25, 2015); *FedEx Home Delivery*, 361 NLRB No. 55. Many of Green Line’s workers have worked for Green Line for ten or more years, with some working for the company for more than 20 years. T-1 at 107; T-2 at 294. Cameraperson Rick MacLeod testified that he has worked for Green Line for almost 26 years and routinely works 160-200 events a year including the Red Sox, Celtics and Bruins, since the 1990’s. T-2 at 294. Paul Goldman, President and owner of Green Line, acknowledged that many people who do work for Green Line have done so for many years and work for Green Line year after year. T-1 at 76. In *FedEx*, the drivers had on- or two-year contracts, but the Board determined that they had a “permanent working arrangement...under which they may continue as long as their performance is satisfactory.” *FedEx Home Delivery*, 361 NLRB No. 55. This is very similar to the arrangement Green Line has with its workers. John Upton testified that he expects to work the full schedule for the Red Sox, Celtics, and Bruins games each year. Rick MacLeod said that he works his schedule around the schedule that Green Line gives him, which has been the Red Sox, Celtics and

Bruins for about twenty years. T-2 at 311. This is clearly an “expectation of a continuous working relationship rather than a short-term relationship,” as described and weighed heavily by the *FedEx* Board. *FedEx Home Delivery*, 365 NLRB No. 55. Upton confirmed that this expectation applies to many Green Line workers when he testified that many of the people he works with on the Red Sox games are “regular names” that are “always on the show,” and have been for the last several years. T-1 at 143.

Penny Starks’ February 10, 2016 email to Mr. Upton and the rest of the Red Sox crew confirms this continuous relationship. P-4. She wrote, “I’d like to offer you all the visitor sox schedule this season, again, as usual.” *Id.* Her next line is even more telling that this is not a new “offer” in the typical sense but rather a continuation of previous work. She did not ask them to accept the offer or even whether they would be working this schedule, but instead wrote “let me know you conflicts.” *Id.* There was a clear expectation of work from each of these workers. Upton and McLeod have worked those regular schedules for several years. T-1 at 136; T-2 at 295.

Although workers may decline some work offered by Green Line, this practice is more indicative of the intermittent nature of the entertainment industry rather than independent contract or status. See *Sisters Camelot*, 363 NLRB No. 13. Upton testified that he rarely declines work, and only does so if he already has another shift scheduled for that day. T-1 at 172. In *Sisters Camelot*, the Board ruled that the “potentially long-term working relationship” outweighed the workers’ “discretion over whether and how much to work.” *Sisters Camelot*, 363 NLRB No. 13. The same reasoning applies in this case. Due to the continuous nature of the relationship and the expectation of future employment, this factor clearly supports employee status.

## **7. Method of Payment**

The analysis of the “Method of Payment” is whether workers are paid an hourly wage, who establishes and controls rates of compensation, and overall how much control the employer has over how much the worker is paid. See *Sisters Camelot*, 363 NLRB No. 13; *Porter Drywall*, 362 NLRB No. 6; *FedEx Home Delivery*, 361 NLRB No. 55. It is clear that when workers perform work for Green Line, Green Line controls how much workers are paid.

As Paul Goldman, the President of Green Line, explained when asked how the pay rates are established, “we negotiate with our clients a rate and we use, you know, the marketplace as a guide. Our largest client is NESN so often we’ll use NESN as our benchmark for the rate that, you know, we use for other events.” T-1 at 67. Goldman specifically testified that last year when he met with NESN, one of Green Line’s major clients, he brought two of the workers with him to assist him with the Green Line negotiations over the rates that NESN would pay Green Line for the work. *Id.* Goldman tried to imply that this showed that the workers were negotiating with NESN for themselves, but it is clear these were Green Line workers assisting Green Line in establishing the rates for all the workers who worked for Green Line on assignments where NESN was contracting with Green Line. When asked “And the rates that you were negotiating with NESN were the rates that would be applied to all the crew members that Green Line provided for the NESN productions, correct?” He responded “yes, that’s right.” T-1 at 93.

Ultimately, Green Line negotiates with clients to arrive at the rates the clients will pay Green Line for the work being provided by Green Line crews. Green Line then notifies its workers what the rate will be for those jobs. P-5. The workers rely on that

rate for their expected pay. T-1 at 144; T-2 at 297-298. Although the workers can reject the work, the workers acknowledge that the rates communicated to them by Green Line are the accepted rates. T-1 at 172; T-2 at 297 -298. The employer clearly establishes and controls the rate of compensation. See *FedEx Home Delivery*, 361 NLRB No. 55.

The fact that Green Line workers are paid based on the number of hours they work is indicative of employee status. See *Porter Drywall*, 362 NLRB No. 6; *FedEx home Delivery*, 361 NLRB No. 55. Even though they invoice Green Line by the event, as required by the company policy, they indicate the number of hours to be paid on their invoices, and they put the rate on the invoice they are told to bill by Green Line. P-12; P-14, “Green Line Billing—Please Read”. Time is the determining factor of how much the workers get paid, as is evidenced by the receipt of overtime pay for all hours over 10 hours. T-1 at 31. As Goldman described, the overtime rate is computed based upon the calculation of the worker’s hourly rate and overtime is then paid for all hours over 10 at time and one half the hourly rate. *Id.* The standard shift is ten hours, and employees get paid a set rate for those ten hours. *Id.* If they are required to work longer, they get paid overtime based on the amount of addition time they work. *Id.*

As in *FedEx*, Green Line workers earnings “do not depend largely on their ability to exercise good business judgement” or “to be able to take financial risks in order to increase their profits.” *FedEx Home Delivery*, 361 NLRB No. 55. The workers are notified of the pay rate and send in invoices at those rates. If they work overtime or miss a meal they receive premium pay. T-1 at 79. They are also reimbursed for parking and when appropriate receive a per diem for out of pocket expenses such as meals. E-2; E-9. When the work is a far distance the worker also receives pay for mileage, and if they need to stay overnight, Green Line arranges for hotels and pays for the hotels. T-1

at 164. In fact, once they are told their rate by Green Line, the workers do not make any business decisions at all regarding their invoice or how much they are paid.

The Region also acknowledged that GLG also provides worker's compensation coverage for the workers, which is indicative of employee status. Decision at 11. Therefore, the method of payment factor supports a finding of employee status. Decision at 11.

**8. Whether the crew members are rendering services as part of an independent business**

The Region found that this factor "weighs heavily in favor of employee status." Decision at 12. The reasoning is based on the facts that "there is no evidence that crew members enjoy entrepreneurial opportunity or take on any risk as a result of their work for GLG." *Id.* "Like the musicians in Lancaster Symphony Orchestra, *Supra*, slip op. 1764-1765, the crew members do not receive more or less money based on ticket sales or on how well or poorly they perform at a given event. *Id.*

Contrary to GLG's assertion, the fact that the crew members may choose not to work every game that is offered by GLG does not mean that they enjoy an opportunity for entrepreneurial gain; the Board has held that the choice to work more hours does not turn an employee into an independent contractor, as to find otherwise would suggest that employees who volunteer for overtime would be independent contractors. *Id.*, slip op. at 1765. Nor does the fact that the crew members can work for other crewing companies weigh heavily in favor of a finding of independent contractor status. Thus, in *Lancaster Symphony Orchestra*, the Board held the fact that musicians hold other jobs simply reflects the part-time nature of their employer's performance schedule. It noted that the Board has repeatedly held that employees in certain industries, such as the entertainment industry typically have intermittent working patterns and has accommodated that fact by establishing eligibility formulas for voting in an election rather than by excluding such workers from the Act's coverage as independent contractors. See also, *Sister's Camelot*, *supra*, slip op. at 5 (that canvassers may and often do work for other employers when they are not actively working for the employer is essentially indicative of their part-time work schedule and had little bearing on their independent contractor status). Decision at 12.

The Region properly found that the work of the crew members is an indispensable part of the regular business of GLG, similar to the stagehands in *Crew One Productions Supra* and the canvasses in *Sisters' Camelot, Supra*, explaining that without the work of these workers, the employer would be unable to fulfill its business mission.

In several cases, the Board has decided this factor based on what the “primary service provided by the employer” is and whether the workers perform “essential functions.” *Porter Drywall*, 362 NLRB No. 6; *FedEx Home Delivery*, 361 NLRB No. 55. In *FedEx*, the Board determined that the drivers devote a “substantial amount of their time, labor and equipment to performing essential functions that allow [FedEx] to compete in the package delivery market.” *FedEx Home Delivery*, 361 NLRB No. 55. The same can be said of the Green Line workers. Mr. Goldman testified that Green Line’s crewers make up about 90% of Green Line’s business. T-1 at 13.

The Board found in *FedEx* that the company’s central mission was delivering packages to customers, and the drivers “effectuate that purpose.” *Id.* Similarly, Green Line’s central mission is providing production services, and its workers effectuate that purpose. They “perform functions that are not merely a ‘regular’ or even an ‘essential’ part of the Employer’s normal operations, but are the very core of its business.” *Porter Drywall*, 362 NLRB No. 6; *FedEx Home Delivery*, 361 NLRB No. 55.

#### **9. The skill required in the occupation**

The Region found the evidence in this category to be inconclusive since the petitioned for technicians include highly skilled, moderately skilled and unskilled workers. Decision at 10.



A large portion of the employer's presentation during the hearing revolved around the skill level of the workers. While the skill level of the workers is one of the ten factors the Board has considered, it is not determinative of independent contractor status. See *Lancaster Symphony Orchestra*, 357 NLRB at 1766. The Board has found that many skilled groups of workers are covered by the Act, including storyboard animation freelancers and symphony orchestra musicians. See *Id.*; *DIC Entertainment*, 328 NLRB 660 (1999). The Green Line workers on the whole are arguably even less skilled than these groups of specialized artists, as there is a range of technical managers. T-1 at 46, 51. Therefore, even the skilled workers can be employees.

**10. Whether the principal is or is not in the business**

The Region found that GLG is engaged in the business of staffing crews for sporting events and its crew members are an indispensable part of this endeavor. Therefore, this factor weighs in favor of employee status. Decision at 12.

GLG is clearly engaged in television production, which is the work performed by the workers. In *FedEx*, the Board found that FedEx was "engaged in providing a...transportation and delivery service," and that the drivers were as well. *FedEx Home Delivery*, 361 NLRB No. 55. In *Porter Drywall*, the Board found that both the employer and the employees were engaged in drywall installation. *Porter Drywall*, 362 NLRB No. 6. Green Line's website describes the company as "New England's Leading Television Production Services Company." P-1. Green Line provides production services to clients, and the workers actually perform those services.

### **III. THE REGIONAL DIRECTOR PROPERLY FOLLOWED THE BOARD'S DECISION IN CREW ONE PRODUCTIONS INC.**

The Region properly relied on the Board and Region 10's Decision in Crew One Productions, Inc. Regional Director's Decision and Direction of Election, case 10-RC-124620, Request for Review denied August 21, 2014, where Region 10 determined that stage hands used in connection with live concerts perform essential functions of the employer's operations, in as much as the employer is engaged in the business of providing labor for theatrical venues. The Regional Director declined to rely on the 11<sup>th</sup> circuit reversing of the Board's decision in Crew One Productions explaining that

The Board has long maintained that it is not bound by the decisions of circuit courts except in the circuit where the case originated, and it is my duty to apply established Board precedent which the Supreme Court has not reversed. *Pathmark Stores*, 342 NLRB 378, 378 fn. 1 (2004); *Waco, Inc.*, 273 NLRB 746 (1984); *Iowa Beef Packers*, 144 NLRB 615, 616 (1963). Decision at 11 FN16.

"It has been the Board's consistent policy for itself to determine whether to acquiesce in the contrary views of a circuit court of appeals or whether, with due deference to the court's opinion, to adhere to its previous holding until the Supreme Court of the United States has ruled otherwise...Only by such recognition of the legal authority of Board precedent, will a uniform and orderly administration of a national act, such as the National Labor Relations Act, be achieved." *Ins. Agents (Afl-Cio) (Prudential Ins. Co. of AM)*. 110 NLRB 768, 773 (1957). See also *Iowa Beef Packers, Inc.*, 144 NLRB 615, 616 (1963), endf. in part 331 F.2d 176 (8<sup>th</sup> Cir. 1964) (quoting *Insurance Agents' International Union, AFL-CIO*, 119 NLRB 768, 773 (1957)). *Pathmark Stores, Inc. & Local 342-50, United Food & Commercial Workers Union, AFL-CIO*, 342 NLRB 378, 380 (2004).

Therefore, it was perfectly appropriate and proper for the Region 1 Regional Director to continue to follow the analysis from Region 10 in the Crew One Productions case and to choose not to follow the 11<sup>th</sup> circuit reversal of the Crew One Case.

#### IV. CONCLUSION

The Region 1 Regional Director's Decision and Direction of Election in this case determining that the petitioned for broadcast technicians are statutory employees and therefore directing an election is correct and therefore the Board must deny the Request for Review of Employer Green Line Group, Inc. There is no legal or factual basis for the Board to conclude that compelling reasons exist for the Board to grant this Request for Review. Region 1's September 16, 2016 Decision and Direction of Election must stand.

Dated: October 14, 2016

Respectfully Submitted,



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## CERTIFICATE OF SERVICE

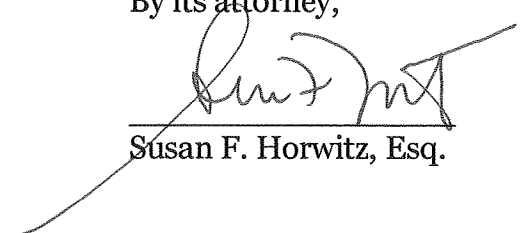
I, Susan F. Horwitz, Esquire, hereby certify that on October 14, 2016, I served the foregoing Petitioner, IBEW Local 1228, AFL-CIO Opposition to Green Line Group's Request for Review, upon the Respondent, Green Line Group by mailing first class mail to the attorney of record and to the NLRB Region 1 Regional Director, in this matter as follows;

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Dated: October 14, 2016

Respectfully submitted,  
IBEW Local 1228,  
By its attorney,



Susan F. Horwitz, Esq.